

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**RESPONSES TO EPIC’S OBJECTIONS
TO SPECIAL MASTER RULINGS ON
APPLE INC.’S PRODUCTIONS OF RE-
REVIEWED PRIVILEGED
DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Apple respectfully submits the following Responses to Epic’s Objections to certain of the Special Masters’ rulings on Apple’s productions of re-reviewed and privileged documents, produced to Epic in redacted form on May 19, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple’s responses relate only to documents Apple believes are not already covered by Your Honor’s and Judge Gonzalez Rogers’ existing rulings on Apple’s privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

Slack Messages: PRIV-APL-EG 00222457, PRIV-APL-EG 00222512, PRIV-APL-EG 00223257, PRIV-APL-EG 00224071

PRIV-APL-EG_00222457 is a Slack message chain among several non-lawyers regarding App Store changes made in foreign jurisdictions. The majority of the chain is unredacted. Apple seeks to redact only two discrete messages in which a non-lawyer identifies an issue on which they have sought legal advice and are awaiting feedback. A message disclosing a request for legal advice is privileged, even if an attorney does not appear on the message itself. *See In re Grand Jury Investigations*, 974 F.2d 1068, 1070 (9th Cir. 1992); *In re Meta Healthcare Litig.*, 2024 WL 3381029, at *2 (N.D. Cal. July 10, 2024).

PRIV-APL-EG_00222512 is a Slack message chain discussing various App Store changes in different jurisdictions. The only redacted exchange is between a non-lawyer and Ling Lew (in-house counsel), in which the non-lawyer directs a question to Ms. Lew about a proposal for coordinating regulatory compliance efforts across multiple jurisdictions. Ms. Lew provides a response and also references work being done by another in-house counsel (Sean Dillon) related to regulatory issues in the Netherlands. This exchange for the purpose of obtaining and providing legal advice is privileged. *See United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020).

PRIV-APL-EG_00223257 is a Slack message chain addressing certain developer documentation related to new App Store features and services. The redacted messages discuss feedback received from Ling Lew (in-house counsel) on the developer documentation, including the substance of that feedback and proposals for addressing it. A message that relays legal advice received from counsel in another communication remains privileged. *See Dolby Lab's Licensing Corp. v. Adobe Inc.*, 402 F. Supp. 3d 855, 866 (N.D. Cal. 2019); *Chrimar Sys. Inc. v. Cisco Sys. Inc.*, 2016 WL 1595785, at *3 (N.D. Cal. Apr. 21, 2016).

PRIV-APL-EG_00224071 is a Slack message chain discussing various App Store changes Apple has implemented across different jurisdictions. In the redacted messages, the non-lawyers discuss whether to add an additional column to a chart outlining those changes, referencing advice received from Ling Lew (in-house counsel) regarding the scope of certain changes. The messages disclose the content of the advice received from Ms. Lew and, if unredacted, would reveal that advice to Epic. Accordingly, the messages are properly redacted as privileged. *See Dolby Lab's Licensing Corp.*, 402 F. Supp. 3d at 866; *Chrimar Sys.*, 2016 WL 1595785, at *3.

Emails: PRIV-APL-EG 00223572, PRIV-APL-EG 00224935

PRIV-APL-EG_00223572 is an email chain, largely unredacted, in which a non-lawyer describes different options for data management and analysis related to new App Store features. The unredacted portion relates to the technical aspects of the options. The redacted portion concerns the recommendation from “Privacy” on the options, taking into account Apple’s legal obligations. Additionally, the email relays measures recommended by legal to mitigate any legal concerns with the various options being considered. Even though the sender is not herself a lawyer, she is relaying legal advice obtained from in-house counsel, and the message is therefore privileged. *See Dolby Lab ’ys Licensing Corp.*, 402 F. Supp. 3d at 866; *Chrimar Sys.*, 2016 WL 1595785, at *3.

PRIV-APL-EG_00224935 is an email exchange initiated by Ling Lew (in-house counsel) relaying advice received from outside counsel regarding certain aspects of Apple’s compliance plan regarding new regulatory requirements in Europe. Epic does not challenge the redaction of Ms. Lew’s email, but opposes redactions to two messages sent by non-lawyers in response. But Apple has redacted in those messages only content that clarifies the legal advice already provided by Ms. Lew or expressly seeks legal advice from Ms. Lew. Both an expression of legal advice received from a lawyer, *see Dolby Lab ’ys Licensing Corp.*, 402 F. Supp. 3d at 866; *Chrimar Sys.*, 2016 WL 1595785, at *3, and a request for legal advice, *see In re Grand Jury Investigations*, 974 F.2d at 1070, are privileged.

DATED: May 28, 2025

WEIL, GOTSHAL & MANGES LLP

By: /s/ Mark A. Perry

Counsel for Defendant Apple Inc.